

UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF TENNESSEE

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEP. CLERK

CRIMINAL JUSTICE ACT PLAN

AS AMENDED, OCTOBER, 1999

CRIMINAL JUSTICE ACT PLAN

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, as amended, (CJA), section 3006A of title 18, United States Code, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the Eastern District of Tennessee adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk, the Community Defender Organization, and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the clerk of court with a then current copy of this Plan upon the attorney's first appointment under the CJA or designation as any member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Community Defender Organization shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

A. "Representation" includes counsel and investigative, expert, and other services.

B. "Appointed attorney" includes private attorneys, the Chief Attorney of the Community Defender Organization (hereinafter the Community Defender and staff attorneys of the Community Defender Organization).

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:

a. is charged with a felony or with a Class A misdemeanor;

- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
- c. is charged with a violation of probation, or faces a chance of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
- j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 28, United States Code;

- k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a judge or United States Judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of title 28, United States Code;
 - c. is charged with civil or criminal contempt and who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. is proposed by the United States Attorney for processing under a pretrial diversion program;

- f. is held for international extradition under chapter 209 of title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be appropriate. In a federal capital case, at least two attorneys should be appointed.
2. Qualifications. Except as provided by section 848(q)(7) of title 21, United States Code, at least one attorney appointed in a capital case shall meet the qualification requirements set forth in sections 848(q)(5) and (6) of title 21, United States Code. Pursuant to section 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under sections 848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of

the possible penalty and to the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

V. COMMUNITY DEFENDER ORGANIZATION

A. Establishment.

1. Pursuant to subsections (g)(1) and (g)(2)(B) of the CJA, Federal Defender Services of Eastern Tennessee, a non-profit defense counsel service, is authorized to provide representation as a Community Defender Organization for the Eastern District of Tennessee. The by-laws of Federal Defender Services of Eastern Tennessee are incorporated as part of the Plan, and a copy of said by-laws shall be maintained by the clerk of court and attached to the original of this Plan. Upon organization

of the community defender's office, the community defender shall notify this court that the office of the Community Defender is available to accept appointments for representation.

2. The Community Defender Organization shall be capable of providing legal services throughout the district and shall maintain offices in Chattanooga, Knoxville and Greeneville, Tennessee.
- B. Supervision of Defender Organization. The community defender shall be responsible for the supervision and management of the Community Defender Organization. Accordingly, the community defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the community defender, as provided in volume VII, Guide to Judiciary Policies and Procedures.

I. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.
- C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be

financially eligible for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. SECTION 2254.

- A. Appointment of Counsel. The court shall appoint a member or members of the Special Death Penalty Habeas Corpus Panel, and/or the Community Defender with his or her consent or other attorney qualified under section 848(q) of title 21, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code.
- B. Federal Community Defender
 - 1. The Federal Community Defender, previously designated as a community defender organization pursuant to the provisions of the CJA may be appointed as sole counsel in such proceedings.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association's Model

Code of Professional Conduct, as enacted by the Tennessee Supreme Court as Rule 8 of that Court's Rules.

- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
- D. Continuing Representation. Once counsel is appointed under the CJA counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, notify the community defender who shall discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and arrange to have

the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

- B. Pretrial Services Interview. Where time permits, and consistent with the ability of the pretrial services officer to have adequate time to interview the defendant and verify information prior to an initial appearance, the pretrial services officer shall attempt to have retained or proposed court appointed counsel present for eligible indigent or other defendants at the pretrial services interview.
- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the clerk of the court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge in accordance with the provisions set out in Appendix I, attached hereto. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. Effective Date.

This Plan shall become effective when approved by the Judicial Council of the Circuit.

APPENDICES:

- I. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act.
- II. CJA plan addendum By-laws of Federal Defender Services of Eastern Tennessee

ENTER FOR THE COURT ON MAY 31, 2000.



R. ALLAN EDGAR
CHIEF UNITED STATES DISTRICT JUDGE

APPROVAL BY THE
SIXTH CIRCUIT JUDICIAL COUNCIL
EFFECTIVE MAY 31, 2000



APPENDIX I TO THE CRIMINAL JUSTICE ACT PLAN

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. **Approval.** The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the Panel Selection Committee," established pursuant to paragraph B. of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.
2. **Size.** The Court shall fix periodically, the size of the CJA Panel. The panels shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation.
3. **Eligibility.** Attorneys who serve on the CJA Panels must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the District Judge or Magistrate Judge presiding over the case, or the chief Judge if a District Judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA panel is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment the attorney may be admitted to the CJA panel pro hac vice and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the District should possess such qualities as would qualify him or her for admission to the District's CJA panel in the ordinary course of panel selection.

4. **Application.** Application forms for membership on the CJA Panel shall be made available, upon request, by the clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE

There shall be a panel established for each place within the district where criminal prosecutions are brought (presently Chattanooga, Greeneville, and Knoxville). Attorneys may be selected to serve on more than one panel if necessary to provide a sufficient number of qualified attorneys; however, generally attorneys shall be considered for service on the panel for the court closest geographically to their home or place of doing business.

There shall be a Panel Selection Committee established by the Court for each place within the district where criminal prosecutions are brought. The committee shall consist of one district judge, one magistrate judge, one attorney who has served on the panel for three years or more, an experienced criminal defense attorney who is not on the panel, the District's Panel Representative to the CJA Panel Attorney's Conference, and the Federal Community Defender. The committees shall select their chairperson.

1. Duties.

a. The Panel Selection Committee shall meet at least once a year to consider applications. Each Committee shall review the qualifications of applicants and recommend for approval by the Court those applicants best qualified to fill any vacancies.

At its annual meeting, each Committee shall also review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and Panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

C. CJA TRAINING PANEL

The Panel Selection Committee may establish a "CJA Training Panel" consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned by the Court to assist members of the CJA Panel in a "second chair" capacity. Training Panel members may be eligible to receive appointments and compensation for their non-duplicative services in assisting CJA Panel members or the Federal Defenders in appropriate cases in the discretion of the appointing District or Magistrate Judge. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Federal Community Defender shall maintain a current list of all attorneys included on the CJA Panel with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Federal Community Defender shall furnish a copy of this list to each Judge and Magistrate Judge. The Federal Community Defender shall also maintain a public record of assignments to private counsel and when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Community Defender office and private attorneys according to the formula described in the CJA Plan for the District.

B. METHOD OF SELECTION

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel and quality representation for each CJA defendant.

Once a District Judge or Magistrate Judge has determined that counsel should be appointed for a person pursuant to the CJA, The Federal Community Defender shall be appointed to the case unless there is a conflict or the Federal Community Defender has met or exceeded its quota of cases. In the latter events, a Pretrial Services Officer shall provide the appointing district judge or magistrate judge with the name of the next panel member or members on the list. As soon

as the appointing District Judge or Magistrate Judge determines whether the next member is both available and qualified to handle a case of the type and complexity before it, the Pretrial Services Office shall then contact that attorney and notify him or her of the appointment. If the attorney cannot accept the appointment due to a conflict or some other bona fide reason, the appointing District or Magistrate Judge may appoint the next person on the list who is qualified and available. The Pretrial Services Office shall notify the Office of the Federal Defender and Office of the Clerk of the appointment. The Office of the Clerk shall then issue a CJA voucher, as well as a CJA form 20A to all appointed counsel.

For each of the Court's Divisions where criminal cases are tried, the Federal Community Defender shall keep an up-to-date list of each appointment made of CJA panel members. The Pretrial Services Office shall keep and provide to the Panel Selection Committee prior to each meeting of the Committee showing the appointments made, appointments declined (with the reason therefore, including unable to contact the attorney), as well as with any other information regarding panel members, including but not limited to, any complaints made to Pretrial Services regarding panel representation, which the Chief Pretrial Services Officer believes, in the exercise of his or her discretion, would be of assistance to the Committee. This list shall be available to the Panel Selection Committee upon request.

The lists from which CJA panel attorneys are appointed in the Greeneville, Knoxville and Chattanooga Divisions shall be kept up-to-date by the Federal Community Defender and the Federal Community Defender shall have the responsibility of providing the District Judges and Magistrate Judges of the respective Divisions with copies of these same lists, in cooperation with the Pretrial Services Office.

In the event of an emergency, i.e., weekends, holiday, or other non-working hours the presiding Judge or Magistrate Judge may appoint any attorney or attorneys from the list.


III. COMPENSATION . FILING OF VOUCHERS

Claims for compensation shall be submitted on the appropriate CJA form to the office of the Clerk of Court, which shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form to the assigned Magistrate Judge for action or recommendations. The Magistrate Judge will send recommendations along with the voucher to the assigned District Judge for consideration and action. The presiding Judge or Magistrate Judge may

request additional recommendations, information or further inquiry into any voucher from any member of the Panel Selection Committee, in his or her discretion.

Claims for compensation in excess of the applicable statutory maximum shall be accompanied by CJA form 26A, a copy of which shall be made available to panel members by the office of the Federal Defender.

ENTER FOR THE COURT ON MAY 31, 2000.



R. ALLAN EDGAR
CHIEF UNITED STATES DISTRICT JUDGE

APPROVAL BY THE
SIXTH CIRCUIT JUDICIAL COUNCIL
EFFECTIVE MAY 31, 2000